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SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA

Letter dated 25 February 1993 from the Executive Director
of United Nations Children's Fund to the Chairman
of the Commission on Human Rights

I am writing to you during the current session of the Human Rights Commission, to put on record UNICEF's position in response to the violations of the rights of children and women taking place in the former Yugoslavia, with particular emphasis on the use of rape as a means of waging war.

The Commission has already reviewed the events to which I refer. In fact, Mr. Tadeusz Mazowiecki, the United Nations Special Rapporteur, while introducing the extensive report which he submitted to the Commission, said:

"International opinion has been particularly outraged by the distressing reports we have received about the rape of women and children. I am profoundly shocked by the magnitude of this phenomenon, an extremely cruel and degrading practice that affects the most vulnerable groups in society. Annexed to my report you will find the results of the investigation conducted by a team of international experts appointed for that purpose. It is less important here to specify the exact number of victims as to stress the massive and criminal character of (these events)."

This week the Security Council took the decision to establish an international tribunal to deal with violations of international humanitarian law in the former Yugoslavia. This is the first time the United Nations has decided to establish an international criminal court with the jurisdiction to prosecute crimes committed during armed conflict.

Mr. Chairman, I write today to voice support of these moves and to note that it is extremely important that the special rights of children and women be addressed. At the same time, other elements besides the legal ramifications must be dealt with. Victims must be cared for, and the root causes must be loosened in their tenacious grip.

Many of the pervasive sentiments of outrage which led to this act by the Security Council were reflected in the debate in the Human Rights Commission. A significant number of countries raised the issue of rape of women and girl children, including: Austria, Canada, Denmark on behalf of the European Community, Egypt, Finland on behalf of the Nordic nations, Germany, Hungary, Pakistan and Tunisia.

The actual "Report on the situation of human rights in the territory of the former Yugoslavia", as submitted by Mr. Mazowiecki, tells a shocking story. Findings of the report that relate specifically to this plight of children and women include:

"...Rape by soldiers is increasingly used as a weapon of war against women and girls...

"...The vast majority (of the documented pregnancies) were specifically identified by the physicians or the victims as being the result of rape by paramilitary soldiers...

"...Rape has been used as one method to terrorize civilian populations in villages, forcing ethnic groups to leave...

"...they (the team of experts) heard of no attempts made by anyone in a position of authority to try and stop the raping of women and girls. In fact, some of those in power actively participated in it...

"...Rape of females has encompassed the entire age spectrum, from children to elderly women, in all areas of the conflict..." (a 10-year old victim was specifically mentioned in the report.)

"...The team of experts has observed that children have been and are continuing to be exposed to war trauma directly, as well as through the media and through listening to parents' and other adults' graphic discussions of traumatic events, including rape, in their presence...

"...Rape of women including minors has occurred on a large scale...

"...rape has been used as an instrument of ethnic cleansing."

I understand that the findings of the report of the Special Rapporteur are broadly consistent with factfinding reports prepared by others, including Amnesty International, the UNHCR, the European Community, the World Council of Churches, Physicians for Human Rights, Helsinki Watch and the Conference on Security and Cooperation in Europe (CSCE). Security Council resolution 798 (18 December 1992) refers to the kind of acts documented in these reports as acts of "unspeakable brutality".

The Special Rapporteur, in a separate section understandably dedicated to "The particular suffering of children", invokes at the outset the Convention on the Rights of the Child, noting that it, "inter alia prohibits the torture, abuse or neglect of children and provides for their protection in all circumstances."

The Convention on the Rights of the Child is the international community's latest human rights instrument, still being ratified in record time in a record number of countries, even as many of its protection provisions are being flagrantly violated. Of the 41 articles in Part I of the Convention, fully 17 have evidently been breached in whole or in part by the events in the former Yugoslavia. UNICEF draws to your attention certain of the sections where the violations are most egregious and most harmful:

Article 2, sub 2:

"States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members"...

Article 3, sub 1:

"In all actions concerning children... the best interest of the child shall be a primary consideration"...

Article 6, sub 1:

"States Parties shall ensure to the maximum extent possible the survival and development of the child"...

Article 19, sub 1:

"States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse...including sexual abuse"...

Article 27, sub 1:

"States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development"...

Article 34:

"States Parties undertake to protect the child from all forms of exploitation and sexual abuse"...

Article 37:

"States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"...
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily"...

Article 38, sub 1:

"States Parties undertake to respect and to ensure respect for rules on international humanitarian law applicable to them in armed conflicts which are relevant to the child"...

Article 38, sub 4:

"In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by armed conflict"...

Article 39:

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child".

Such alleged violations of the Convention on the Rights of the Child also contravene provisions of other major international human rights instruments, including: the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of Racial Discrimination, and the Convention on the Prevention and Punishment of the Crime of Genocide.

In addition to these instruments, Governments at the highest political level worldwide, in the World Summit for Children Declaration and Plan of Action, endorsed the concept of children as a zone of peace, and committed themselves to further develop innovative forms of providing protection to children in war situations. The Declaration states:

"We will work carefully to protect children from the scourge of war..."

"Each day, countless children around the world are exposed to dangers that hamper their growth and development. They suffer immensely as casualties of war and violence... as refugees and displaced children,

forced to abandon their homes and their roots... as disabled, or as victims of neglect, cruelty and exploitation."

In the Plan of Action, leaders acknowledge specifically:

"Children need special protection in situations of armed conflict... Resolution of a conflict need not be a prerequisite for measures explicitly to protect children and their families to ensure their continuing access to food, medical care and basic services, to deal with trauma resulting from violence and to exempt them from other direct consequences of violence and hostilities."

Mr. Chairman, these promises apply not only to children within one's country, but to all children. In the case of the former Yugoslavia, the international community is raising its voice against what it believes to be the brutal targeting of children and women as victims of war.

It is tragically unfortunate that, for the last many years, and with increasing intensity, children and women have become gratuitous targets in warfare in many parts of the world. Unspeakable atrocities have occurred far from the public eye and the lens (or interest) of the media, although they are well documented in the reports of United Nations agencies and NGOs. The public outcry that has arisen in defence of children victimized in the former Yugoslavia is no doubt, equally warranted in a number of other situations.

The situation in the former Yugoslavia has galvanized the international community; it is critical that the sentiment generated by the horrible events be transformed into the means to help deter any such actions from taking place in the future, both in the former Yugoslavia and throughout the world. If we act on the crescendo of international concern, we can take a crucial step in the battle for human rights.

Of the various recommendations made in the reports of those who have investigated the damage in the former Yugoslavia, UNICEF finds the following to be of primary importance:

1. All victims of rape, women and children, must have access to complete medical, psychological and where necessary, psychiatric care. Programmes of social reintegration must also be available, pursued at the community level, and within the context of support for the family.
2. Children who suffer trauma as the result of witnessing the rape of others, or who suffer trauma as a result of exposure to (in the words of the team of experts) "unspeakable abuses, cruelties, degradations or personal loss", must have access to a team of medical and emotional support.
3. Special attention must be paid to infants who have been born, or are expected to be born, as a result of rape. The question of adoption must be viewed with great care, consistent with article 21 (b) of the Convention on the Rights of the Child.

UNICEF further concurs in the Rapporteur's affirmation that we must avoid "...at all costs, the stigmatization of, or trafficking in, babies who are born as a result of rape".

4. All refugees and displaced persons should have the right to primary health care. We agree with the Rapporteur that such assistance should be provided within the framework of programmes to rehabilitate women and children traumatized by war.
5. Upon the cessation of hostilities, there should be crash courses for local trainees in counselling those who have suffered rape, chronic violence and trauma.
6. Peace education programmes should be instituted on as broad a scale as possible.
7. The United Nations agencies, and other appropriate international organizations, should develop a cadre of female human rights monitors.
8. All blockades of humanitarian aid supplies must be lifted immediately.
9. The act of rape should be designed a war crime, as asserted by the Special Rapporteur. The applicable Geneva Conventions of 1949 and related Protocols of 1977 suggest no other possible interpretation.
10. The United Nations, through the Centre for Human Rights, should monitor the situation in terms of the points made in this letter, even after hostilities have ceased.

No one pretends that the unleashing of ethnic hatreds is easily appeased. Learning peaceful co-existence with those of different ethnic roots also requires tremendous assistance and training. It is, however, UNICEF's contention that such a real and mature peace is within human reach. This elusive possibility could become reality, however, if, and only if, the international community will work together to uphold in practice the standards it has established in words.

(Signed): James P. Grant
Executive Director
